IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 101 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

MAGANLAL MOHANLAL PANCHAL

Appearance:

1. INCOME TAX REFERENCE No. 101 of 1987

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Commissioner of Income Tax has come up in reference on the following two questions:

(i) "Whether, the Appellate Tribunal is right in law and on facts in holding that the income earned by the partnership firms in which three members of the respective HUFs were partners cannot be added in the hands of the assessee HUF ?"

(ii) "Whether, the Appellate Tribunal is right in law and on facts in holding that it was for the revenue to establish that there was a nexus between the capital of the HUFs and the income from the partnership firms and the revenue having failed to do so the income cannot be added in the hands of the assessee ?"

2. The assessment years involved in the present reference are assessment years 1981-82 to 1983-84 and the relevant accounting period are financial years ending respectively on 31st March. The assessee is a bigger HUF which was partially partitioned and the partition took place for an amount of Rs.50,000/- on 30th March, 1979. The amount was received by three smaller HUFs of Maganlal Mohanlal Panchal, Kacharalal Mohanlal Panchal and Revabhai Mohanlal Panchal. The said three persons joined partnership firms w.e.f. 1-4-1979 and they contributed capital of Rs.8000/- each in the partnership firms in August, 1979. As the Income Tax Officer did not recognise the partition in view of the amended provisions of sec. 171 (9) of the Income Tax Act, 1961 (hereinafter referred to as `the Act') he added the income received from the partnership firms in the hands of the assessee. The said decision was confirmed by the Commissioner of Income Tax (Appeals) and the assessee being aggrieved preferred appeal before the Tribunal.

3. The Income Tax Appellate Tribunal, Ahmedabad Bench `B' posed the question before it for consideration as to whether the income earned by the partnership firms could be added in the hands of the assessee HUF i.e. whether there was any connection between the earning of the income from the partnership and the capital contributed from the funds received on partition of the HUF.

4. Mr. B.B. Naik, learned counsel appearing on behalf of the Revenue submitted that the amounts which were received by the respective smaller HUFs were contributed as capital in the partnership firms and hence the income earned from the partnership firms was

necessarily attributable to such capital contribution. It was further submitted that as the partial partition has not been recognised, as a necessary corollary, the income earned from the partnership firms had to be assessed in the hands of the bigger HUF and not in the hands of respective smaller HUFs.

5. There is no appearance on behalf of the respondent-assessee, though served.

6. The Tribunal has found as a matter of fact that the partnership deed under which the erstwhile members of the bigger HUF entered as partners did not stipulate as a condition that capital contribution was necessary for joining the partnership. Thus, according to the Tribunal, when the smaller HUFs entered the partnership through their respective kartas, it was not because of contributing capital that they had joined partnership. The Tribunal has further found that the respective kartas of three smaller HUFs became partners in April and they did not contribute any capital until August; and that the income received from the partnership firm as a result of conducting the partnership business was not on account of any capital contributed by the three smaller HUFs. In light of these factual findings, the Tribunal has held that the onus to establish the nexus between the funds received on partial partition and the capital contributed in the partnership firms was on Revenue and that the Revenue had failed to establish such a nexus.

7. The settled legal position is that it is not necessary that an HUF should have nucleus of property in order that an HUF can come into existence. In light of this proposition, the Tribunal has held that it was not possible to state that the smaller HUFs came into existence only when the share of partial partition was received.

8. In view of the findings of fact recorded by the Tribunal, it is not possible for us to take any other view of the matter. We, therefore, hold that the Tribunal was justified in law in concluding that the income earned by the partnership firms in which three members of the respective smaller HUFs were partners could not be added in the hands of the assessee HUF and that it was for the Revenue to establish that there was a nexus between the capital of smaller HUFs and the income from the partnership firms and further that the Revenue having failed to establish such a nexus, income from the partnership firms could not be added in the hands of the assessee HUF.

9. We, therefore, answer both the questions referred to us in the affirmative i.e. in favour of the assessee and against the Revenue. The Reference is disposed of accordingly with no order as to costs.

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